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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,986	03/17/2000	Robert Giannini	JARB.005PA	4342

7590 05/27/2004  
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EXAMINER
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GART, MATTHEW S

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/527,986

Applicant(s)

GIANNINI, ROBERT

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-20 are pending in the instant application. Claims 11-20 were withdrawn from consideration as being directed to a non-elected invention.

### ***Drawings***

This application has been filed with informal drawings, which are acceptable for examination purposes only. Figures 1 and 2 contain rough lines and text, which may affect clarity when reproduced.

Applicant is required to submit a formal correction of the noted defect. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being anticipated by Rom U.S. Patent No. 6,307,568 in view of Dodd U.S. Patent No. 6,321,211.**

Referring to claims 1, 4, 5, 6, 9, and 10. Rom discloses a method and an arrangement for on-line viewing of an article on another structure (at least Abstract), comprising:

- Providing a host-site accessible to an on-line viewer (column 4, lines 30-44, "A garment-fitting system 14, for fitting garments over the Internet, receives a number of different inputs.") web-accessible at a separate site and web-linkable to at least one article-provider site (column 6, lines 24-32, "In step 1, the user sends a picture of the body of the user to the vendor of garments over the Internet.") the article provider-site having images of articles for view via the web (Figure 1, Garment picture);
- Linking the on-line viewer to the host-site and selecting a structure in response to a command received by the on-line viewer (Figure 2 and Figure 3);
- Using the host-site, linking the viewer to the at least one article-provider site and passing images from that site for view by the on-line viewer (Figure 2 and Figure 3);
- A memory containing a new image of a merged item composed of merged representations of the different ones of the articles and the structure (Figure 3, step 4);
- At the host-site, electronically storing partial-data sets respectively corresponding to different ones of the articles (column 3, lines 62-65); and
- Generating a new image by merging representations of the different ones of the articles with the structure by forming an image of a merged item including representations of both the structure and the selected article (Figure 2, Figure 3 and column 2, lines 3-9).

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Rom does not expressly disclose a method and an arrangement for on-line viewing of an article on another structure, comprising:

- Communicating the item electronically to another site for a selection, which causes a billing to another site; and
- Electronically gifting the merged item to another site (at least abstract).

Dodd discloses a method and an arrangement for on-line viewing of an article on another structure (at least Abstract), comprising:

- Communicating the item electronically to another site for a selection, which causes a billing to another site (at least column 3, lines 28-50 and column 9, lines 49-67); and
- Electronically gifting the merged item to another site (at least abstract).

The Examiner notes, the virtual storage closet in the instant application is functionally equivalent to the storing function described in Rom. Rom discloses a system where the user optionally selects or changes garment characteristics if available. Such characteristics could include but are not limited to the size of the garment, the color of the garment and the fabric of the garment (column 6, lines 62-65). This is equivalent to the immediate application's description of an electronic closet, which permits the shopper to change the size and color of an article (Page 9 of 14 of the Instant Invention).

Accordingly, it would have been obvious to one of ordinary skill in the art to have modified the system of Rom to have included the limitations of Dodd because garments can also be fitted for someone other than the user, which is a particular

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advantage when buying garments for persons who have difficulty selecting their own garments, such as children (column 2, lines 5-10).

Referring to claims 2 and 7. Rom in view of Dudd discloses a method and arrangement according to claims 1 and 6 as indicated. Rom further discloses a method wherein the partial data sets include a size code (Figure 1, Data about the user body).

Referring to claim 3. Rom in view of Dudd discloses a method and arrangement according to claim 1. Rom further discloses a method wherein the partial data sets include a code identifying a style (Figure 1, Data about garment).

**Claim 8 is rejected under 35 U.S.C. 103(a) as being anticipated by Rom U.S. Patent No. 6,307,568 in view of Dodd U.S. Patent No. 6,321,211, in further view of Official Notice.**

Referring to claim 8. Rom in view of Dudd discloses an arrangement according to claim 6 as indicated supra. Rom in view of Dudd does not expressly disclose an arrangement configured and arranged to limit a maximum amount of storage space in the memory storage device provided for the on-line viewer. Examiner takes official notice that a memory storage device having a maximum limit to accessible storage space is an inherent component of a memory storage device, and does not substantially distinguish the claimed invention. Accordingly, it would have been obvious to one of ordinary skill in the art to have modified the system of Rom and Dodd to have includes a maximum limit in order to enhance services and easy shopping for customers while increasing efficiency (Rom: at least column 1, line 65 to column 2, line 2).

***Response to Arguments***

Applicant's arguments with respect to claims 1-10 have been considered but they are not persuasive.

The Attorney argues that the cited rationale, column 3, lines 28-50 and column 9, lines 46-67 (Dodd), does not teach that the selected gift is sent to the recipient, but merely a notification thereof is sent.

Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

The Examiner notes, Dodd does disclose a method wherein once the gift giver selects a gift, a recipient is notified of the gift. In response to the notification, the recipient then connects online to the gift server, reads the gift selection from a gift queue and determines whether to accept or exchange the gift. If the recipient accepts the gift then the order is sent to the fulfillment queue where it is either sent electronically or mailed directly to the recipient. The method of Dodd is equivalent to the method as claimed in the instant invention wherein a gift is ultimately sent to a recipient.

The Examiner further notes, referring to Figure 2E, a selected gift is graphically shown to the recipient along with product details associated with the selected gift. In the example, the selected earrings from Neiman Marcus are shown in content area **120** as being the selected gift for the recipient. If the recipient wants to keep the selected gift, the recipient selects an "ACCEPT" button **144** within content area **120** and an order for the selected gift is transmitted electronically to the vendor (communication to another site) for shipment to the recipient (column 5, line 64 to column 6, line 18).

The Attorney argues Rom is silent as to any teaching of electronically closeting partial-data sets as claimed.

The Examiner notes, Rom does teach electronically closeting partial-data sets. Claim 1 of the instant application discloses data sets corresponding to different articles, which are stored at the host site. Figure 1 of Rom details Garment picture (12), from which the user selects the requested garment to try on. Along with these pictures, garment data is included, which could include such information as flexibility of the fabric of the garment, the extent to which the fabric tends to cling to the body of the wearer, and other information useful for adjusting the garment as it would appear on the body of the user while being worn by the user.

The Examiner notes, Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well known are



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capable of instant and unquestionable demonstration as being well known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ418, 420 (CCPA 1970).

If an Attorney Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence. In the instant application that Attorney did not adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

Nonetheless, provided below is evidentiary support that a memory storage device inherently has a maximum limit to accessible storage space.

"Lean Machines," Suzanne Kantra Kirschner, *Rolling Stone*, New York, March 4, 1999, Issue 807, page 91, 2 pages.

"Smallest Hard Drive Unveiled," Rex Farrance, *PC World*, *PC World Online*, San Francisco, September 9, 1998, page 1.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Matthew Gart whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

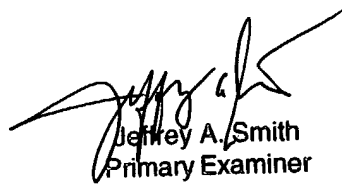
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MSG

November 20, 2003



Jeffrey A. Smith  
Primary Examiner